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ABSTRACT

The paper, part of the paralegal training materials prepared by the National Paralegal Institution, discusses the role of the welfare advocate, a type of legal assistant: the right and responsibility to refuse a case; competency to provide adequate representation; informal advocacy vs. formal advocacy in welfare; arranging the negotiation setting to advantage; balancing the number of participants; establishing the day, hour, and length of time to advantage; setting the agenda; being courteous, creative, and convincing; and dealing with the threat of fraud prosecution. (EA)

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THE ROLE OF THE WELFARE ADVOCATE

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WHAT IS ADVOCACY

Advocacy is simply the process by which an individual directly or indirectly attempts to influence the behavior of others according to a predetermined goal.

Therefore, WELFARE ADVOCACY is the process by which an individual (THE WELFARE ADVOCATE) directly or indirectly attempts to influence the welfare department or other agency to act favorably to his client's goal.

The welfare advocate must have a commitment to the delivery of adequate representation and services to the welfare community. He must understand that the advocate's goal is to further his client's cause.

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WHO IS THE WELFARE ADVOCATE

The welfare rights organization leaders and the legal services program are examples of welfare advocates.

The welfare advocate can be a welfare rights leader working from her living room telephone, the Wall Street attorney, or any other person who has the commitment to getting legal rights for welfare recipients.

THE WELFARE ADVOCATE IS NOT A JUDGE

Many people in social agencies think they are helping clients by giving personal advice based on some opinion or judgement of the client or his behavior. These people have

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a difficult time representing the client's interests and often they take the side of the welfare agency.

If you are unable to be 100% in your client's corner - you are not a true advocate.

THE RIGHT AND RESPONSIBILITY TO REFUSE A CASE

Conflict of Interest:

(a) The advocate relationship to the other side (friend, relative or prior knowledge of the facts).

(b) Strong personal reasons (political, religious, etc.) When you know you cannot do you best.

Unethical to pursue the course:

(a) Harassment of the other side

(b) Will hurt others in the community

COMPETENCY TO PROVIDE ADEQUATE REPRESENTATION

If the advocate lacks the skill/knowledge of the law to adequately prepare and handle the case and he is unable to get competent assistance from another advocate, he should not attempt to represent the client.

As an advocate, you have an obligation to:

The client,

The client population as a whole,

Your office and co-workers,

Yourself

INFORMAL ADVOCACY vs. FORMAL ADVOCACY IN WELFARE

Most people think when we speak of advocacy in welfare that we are talking about the presentation at a fair hearing. They think that once an advocate is skilled and knowledgeable in welfare advocacy he can move to taking all cases to fair hearings, leaving out the important step of negotiation.

The welfare rights movement was built on the ability of its membership to negotiate with local welfare departments to gain client's rights.

Welfare departments have not changed and continue to make mistakes. District Directors and other welfare department staff continue to change their proposed action based on aggressive negotiation by a skilled advocate.

Hearings are time consuming, and if your client already has been terminated from assistance and is not receiving "aid paid pending" a swift negotiation could mean immediate money to meet the basic needs of the client and his family.

In most negotiations with the welfare department you are not dealing from a position of power. However, with knowledge of the law, adequate preparation, an understanding of the general policy and procedures of the welfare department, and your ability to demonstrate the correctness of of your client's cause, you will be able to equalize and often neutralize the power of the welfare department.

As a negotiator you will seldom be faced with a welfare department representative who has a carefully thought out strategy or a series of potential offers. In cases in which your client is attempting to obtain some denied benefit, the welfare department has no offer to make; therefore, you will have to convince the welfare department of the correctness of your client's claim. On the other hand, in cases in which the welfare department is proposing to discontinue previously granted benefits, your responsibility is to demonstrate that the proposed action is inappropriate.

The welfare department may make an offer during the negotiation of a case in which the department is proposing to discontinue previously granted benefits. Such an offer usually includes having your client go off welfare for a specific length of time in exchange for the welfare department not collecting an alleged overpayment or not pursuing fraud.

Negotiation sessions at the welfare department are informal. The atmosphere in such a meeting with a trained welfare worker is frequently amiable, with the worker expressing a sense of concern and a desire to cooperate. Their aura of concern and fairness as well as their attitude of benevolence should not be allowed to interfere with your aggressive advocacy in behalf of your client. It is important that you indicate to the welfare department's representative that both of you are working towards the same end (proper implementation of the AFDC program); but

that the action or lack of action of the welfare department is contrary to the intent and goals of the welfare program. You must maintain a strong sense of professional identity at all times.

Welfare workers may have personal stakes in the resolution of welfare problems. The risk of a welfare worker being perceived as incompetent or having motives contrary to the welfare department's public position is often a factor which helps you in the negotiation process. An appeals worker whose job is to persuade the client to withdraw a request for a hearing is less likely to have a personal stake in the correctness of a welfare worker's decision.

In addition to the above information, the following tips will help tilt the balance of power to your side.

ARRANGE THE NEGOTIATION SETTING TO YOUR ADVANTAGE

Most negotiations will take place in the welfare department offices. It may be possible to negotiate with a welfare worker at your office, but it is unlikely that a supervisor or other administrator will come to your setting. You may still be able to balance the setting if you arrange the meeting to take place in an office or room other than the office used by the person with whom you are negotiating. Using the "boss's office" often makes the welfare worker uncomfortable and gives you a slight edge. If you are using a conference room, get to the room early and arrange the chairs in a position advantageous to you.

It may be an advantage to sit at the head of the table facing the door. When the person(s) arrive, stand up, direct the person towards the seat you want him to sit in and then sit down before he has a chance to do so. If he sits where you suggest, he may be more willing to give in on your points.

BALANCE THE NUMBER OF PARTICIPANTS

One to one negotiations usually work better. Due to the number of cases handled in a legal services office, you will seldom have the opportunity to have additional negotiators on your side present during the sessions. Even though the welfare department may have several people present to meet with you, this is not a disadvantage as long as you are adequately prepared on all aspects of the case and are able to control the agenda and the flow of the discussion. Welfare negotiations deal primarily with either eligibility or the failure of the department or client to comply with some regulation or policy. Welfare workers have very large caseloads and have little personal contact with their clients. There is little time for communication between workers and supervisors about individual cases. Appeals workers, although sometimes more knowledgeable than caseworkers, still have little experience dealing with a skilled, well prepared advocate. These factors, plus the lack of preparation for negotiation on the part of the welfare department usually can balance the presence of the extra people representing the welfare department. Under-

prepared representatives of the welfare department can be used to assist your claim by directing the more complex questions to them. You must always know who each person representing the welfare department is and why they are present. Observers should be excluded. Make sure you are meeting with only those persons who have the authority to meet and implement you client's goals. On your side, you should take only those persons authorized by your client to the negotiation session. Each of the participants you bring to the negotiation session must be prepared on all issues. An unprepared participant can have an adverse effect in the negotiation session that could cause you to loose the benefits of your client.

SET THE DAY, HOUR AND LENGTH OF TIME TO YOUR ADVANTAGE

The best negotiation day for you is a bad negotiation day for the welfare department. Some of the bad days for the welfare department are:

Welfare check delivery day
The three (3) days after check delivery day
The three (3) days before check delivery day
Monday mornings
Friday afternoons
Payday
Tuesday after three day weekend
Day before and after a holiday
Christmas, New Year and Thanksgiving week

The best time to negotiate is the time of day you are at your best. You may need to modify your "best time" to coincide with the "bad" hours of the welfare department. Bad hours for the welfare department are:

Early in the morning
Late afternoons
Before and after lunch
From 4 P.M. and thereafter

The welfare department will bargain more quickly and carelessly at a bad hour only when they assume your position can be justified. It is necessary for you to present your points in a manner which is easily justified and allows the welfare department to make the necessary change with the least amount of hassle to them.

SET THE AGENDA

Take the issues in the order which provides the greatest advantage to you. In a case with several issues, discuss the "sure win" issue first. Once the welfare department has conceded on one point, it is easier for them to make additional concession

Once you have set the agenda for the discussion of the issues, immediately put the welfare department representative on the defensive by demanding an explanation of the proposed action as it pertains to your first agenda item. Your response to their explanation should incorporate as many of the following points as possible:

(1) The welfare department facts are incorrect.

(2) The facts are being applied incorrectly.

(3) The proposed action is contrary to state regulations.

(4) The welfare department is mistaken in their interpretation of the regulation. (You should be prepared to cit examples when the regulation was interpreted in a manner not adverse to your client.)

(5) Your client is an exception to the regulation, policy or procedure; give the reasons why this is the case.

(6) The proposed action is contrary to agency policy or procedures.

(7) The need of the welfare department to avoid going to a hearing in a case where the issue could have been so easily resolved.

(8) The need of the welfare department to avoid going to a hearing in a case in which the decision will be adverse to them.

Discussing these factors as they relate to your client's case will help you in controlling both the pace and the result of the negotiation session.

BE COURTEOUS, CREATIVE AND CONVINCING

Being courteous, by allowing the welfare department a chance to make their point will not only help you with the case you are working on now, but will help you in future dealings with the welfare department.

You must be creative in the preparation and presentation of your case. Prepare both sides, know your weak points and creatively maneuver around them.

Be convincing in your statements. Bring reports or other materials to demonstrate your knowledge of the issues at hand. If you are convinced that your client's case is correct you should have no trouble convincing the representative of the welfare department.

DEALING WITH THE THREAT OF FRAUD PROSECUTION

In each welfare case there is always a possibility of the threat of welfare fraud prosecution, although

only about one case in every ten thousand referred to the district attorney is ever prosecuted. In the past, the welfare department has raised the issue of fraud to disarm the client and/or his advocate in order to avoid fair hearing proceedings. Even though the threat may be a tactic, the possibility of a fraud prosecution must be taken very seriously. In each initial interview with an applicant or recipient of any public benefit program, all eligibility factors must be thoroughly explored. The possibility of fraud prosecution must be discussed with each client. All alleged facts and information gathered during the investigation must be reviewed in light of possible fraud prosecution, and reviewed again with the client prior to any negotiation or participation in a hearing. This should be done during the Client/Advocate Follow-up Conference. If fraud is raised during negotiation with the welfare department, you should gather all the facts regarding the allegation and demand any new or additional information (investigator's reports, etc.) from the department. If there is no new or additional relevant information and you are convinced the welfare department has no basis for welfare fraud prosecution you should quickly dispose of the issue and reassert the possition of your client, listing the highest demand your client could remotely be eligible to receive. If you are

convinced that the welfare department is serious, gather the facts and leave the meeting. Talk to your lawyer before doing anything else.